

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TONY B. CLAY,

Plaintiff,

v.

Civil Action No. 5:12CV92  
(STAMP)

CONSOL PENNSYLVANIA COAL  
COMPANY, LLC,  
a foreign limited liability  
company and subsidiary of  
Consol Energy, Inc.,  
MCELROY COAL COMPANY,  
a foreign corporation and  
subsidiary of Consol Energy, Inc.  
and CONSOL ENERGY, INC.,  
a foreign corporation,

Defendants.

MEMORANDUM OPINION AND ORDER  
CONFIRMING THE PRONOUNCED ORDER  
OF THIS COURT ON JULY 17, 2013  
GRANTING DEFENDANTS' MOTION TO WITHDRAW  
APPEARANCE OF DAVID J. DELFIANDRA, ESQ.

I. Background

The above-styled civil action involves claims of racial discrimination and retaliation under Title VII, a claim for breach of the plaintiff's employment agreement, and a claim for violation of West Virginia's Wage Payment and Collection Act. Numerous discovery motions have been filed in this case, with some motions still pending. Further, a motion for sanctions against the defendants for an abuse of the discovery process is also pending.

The defendants by counsel filed a motion for the withdrawal of one of their attorneys of record, David J. DelFiandra. In support

of their motion, the defendants stated that Jeffrey A. Grove and David L. Delk, Jr. have now entered appearances in this matter on behalf of the defendant, and William A. Kolibash will also remain as counsel of record in this action. The plaintiff then filed a response in opposition to the defendants' motion arguing that they will be severely prejudiced if the motion is granted before the pending discovery motions are resolved and until there is a representation that the withdrawal will not result in the modification of the existing schedule.

For the reasons stated below, the defendants' motion to withdraw the appearance of David J. Delfiandra is granted. This Court notes, however, that by granting this motion it is not relieving counsel of responsibility for any activities he participated in prior to withdrawal.<sup>1</sup>

## II. Discussion

Local Rule of General Practice 83.03 provides that "[n]o attorney who has entered an appearance in any civil or criminal action shall withdraw the appearance or have it stricken from the record, except by order." In considering any motion to withdraw, this Court may consider the disruptive impact granting the withdrawal will have on the client and the prosecution of the case.

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<sup>1</sup>This point was noted by the Court at a hearing conducted on July 17, 2013.

Patterson v. Gemini Org., Ltd., No. 99-1537, 2000 WL 1718542, at \*2 (4th Cir. Nov. 17, 2000).

This Court recognizes plaintiff's concerns regarding the possible disruptions that withdrawal of counsel would have at this stage of the litigation. This Court, however, finds that such disruption will be minimal due to two factors. First, the scheduled deadline for dispositive motions is now set for October 15, 2013 and trial is set for January 14, 2014. Thus, the new counsel shall have sufficient time to prepare for trial, without the need for seeking any additional time. Second, at a motions hearing held July 17, 2013, defendants' new counsel stated that they needed no additional time to prepare for trial. Therefore, this Court is satisfied that no further disruption of the amended scheduling order will be required as a result of this motion to withdraw.

Further this Court recognizes the plaintiff's concern regarding possible prejudice that may result from counsel's withdrawal because discovery motions that involve the withdrawing counsel, including a motion for sanctions for abuse of the discovery process, are still pending. Such concerns are unnecessary, however, as by granting the motion to withdraw, this Court is not relieving the defendants' counsel of responsibility for any activities that occurred prior to his withdrawal.

III. Conclusion

For the above stated reasons, the defendants' motion to withdraw the appearance of David J. DelFiandra (ECF No. 275) is hereby GRANTED.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: July 18, 2013

/s/ Frederick P. Stamp, Jr.

FREDERICK P. STAMP, JR.

UNITED STATES DISTRICT JUDGE